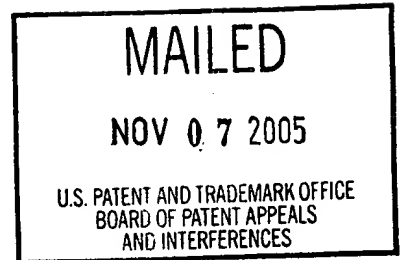


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICK L. ALLISON,
THOMAS MATTHEW MCCANN, and
PETER JOSEPH MARSICO

Application No. 09/649,461



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on July 20, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

According to the Manual of Patent Examining Procedure (MPEP) § 609 C(2) (Eighth Ed., Rev. 2, May 2004):

Examiners must consider all citations submitted in conformance with the rules and this section [37 CFR § 1.197 and 37 CFR § 1.198], and their initials when placed adjacent to the considered citations on the list or in the boxes provided on a form PTO-1449 . . . provides a clear record of which citations have been considered by the Office.

On March 12, 2001, appellants filed an Information Disclosure Statement (IDS). In the Image File Wrapper (IFW) of the electronic file there are two PTO SB/08A forms listing the references of the IDS. However, only one of the forms has been properly acknowledged. Additionally, on July 24, 2003, appellants filed an IDS *via* fax. The IFW PTO SB/08A form accompanying this IDS also has not been properly acknowledged

Appellant appropriately filed an Appeal Brief on January 31, 2005, under 37 CFR § 41.37. The Examiner's Answer of April 19, 2005, does not comply with the headings as set forth in the new rules under 37 CFR § 41.37(c). Correction is required.

Accordingly, it is

ORDERED that the application is returned to the examiner:

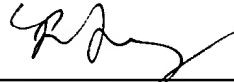
- a) for proper consideration and/or acknowledgment of the PTO SB/08A forms of March 12, 2001 and July 24, 2003, notification to appellants in writing of such consideration,

Application No. 09/649,461

- b) to vacate the Examiner's Answer mailed April 19, 2005, and issue a revised Examiner's Answer in compliance with the new rules effective September 13, 2004, and
- c) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



CRAIG FEINBERG
Program and Resource Administrator
(571) 272-9797

cc: JENKINS, WILSON & TAYLOR
3100 TOWER BLVD.
SUITE 1400
DURHAM, NC 27707

CF/vsh